



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on : 08<sup>th</sup> July, 2025*  
*Pronounced on : 01<sup>st</sup> August 2025*

+ W.P.(C) 792/2025, CM APPL. 3905/2025 & CM APPL. 3906/2025.  
+ W.P.(C) 800/2025, CM APPL. 3962/2025 & CM APPL. 3963/2025.

CISS SERVICES LTD .....Petitioner  
Through: Mr. Ashish Mohan, Sr. Adv. with  
Mr. Arush Bhandari, Ms. Shimran  
Shah, Mr. Santosh Kushwaha,  
Adv.

versus

UNION OF INDIA & ORS. ....Respondents  
Through: Mr. Vikram Jetly, CGSC with Ms.  
Shreya Jetly, Adv, Mr. Naveen,  
SSA, Mr. Gokul, GP for R-1 & 2.  
Mr. Anupam Kishore Sinha with  
Mr. Pradeep K Tiwari, Mr.  
Apoorv Jha, Mr. Sahitya  
Srivastava, Adv for R-3.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE ANISH DAYAL**  
**JUDGMENT**

**ANISH DAYAL, J.**

1. These petitions have been filed seeking quashing of the operation and issuance of work orders to respondent no.3 (*SIS Limited*) in respect of the tenders bearing numbers *GEM/2024/B/5209730* and *GEM/2024/B/5209739* (*'the tenders'*).



2. Respondent no.1 (*Ministry of Culture, Union of India*) issued the tenders on 26<sup>th</sup> July 2024, requisitioning service of unarmed security guards for protected monuments located in the Southern and Central regions of India; more specifically, requirement of 925 and 381 unarmed security guards, respectively.
3. The said tender process was initiated on the Government e-Marketplace (*'GeM'*) platform. Archaeological Survey of India (*'ASI'*)/ respondent no.2 was the beneficiary of the subject tender.
4. Petitioner, a company registered under the Companies Act, 2013, claims to be engaged in the business of providing comprehensive end-to-end outsourced solutions and services for sectors where security and safety risks are considered a strategic threat. Petitioner claims to have a pan-India presence and provides services to institutions, banks, and various government undertakings.
5. Petitioner submitted its bid on 13<sup>th</sup> August 2024, annexing a self-declaration of its experience from the year 2022, in compliance of requirements of the tender.
6. There were 76 bidders on the portal. On 23<sup>rd</sup> December 2024, technical bids were opened, and 75 of the 76 bidders, including petitioner, were disqualified. The only bidder remaining was respondent no. 3, who was awarded the contract.
7. On the GeM portal, the reason cited for petitioner's disqualification was "*does not full fill the parameter namely required experience hence disqualified*".



8. Petitioner submitted a representation to respondent no. 2 on 24<sup>th</sup> December 2024, urging them to reconsider the disqualification in light of the assertion that petitioner squarely qualified.

9. By a response dated 08<sup>th</sup> January 2025 on the GeM portal, it was stated, “*on evaluation of all documents, not found eligible.*”

10. Petitioner, therefore, filed these Writ Petitions; notice was issued by this Court on 22<sup>nd</sup> January 2025; it was directed that “*in the meantime, we provide that finalization of the tender in question shall be subject to further orders which will be passed by the Court in this petition.*”

11. Thereafter, pleadings were completed, and detailed arguments were heard.

**Submissions on behalf of petitioner**

12. Mr. Ashish Mohan, Senior Counsel appearing for petitioner, drew attention of the Court to the qualification requirement in the bid document.

13. He highlighted that the services required were of security services for protected archaeological monuments, however it essentially was for the provision of unarmed security guards.

14. The specific clauses in the bid document, which stipulated the experience requirement, are extracted as under:

“2. Years of Past Experience required: The bidder must have experience for number of years as indicated above in bid document (ending month of March prior to the bid opening) of providing similar type of services to any Central/State Govt Organization/PSU  
Copies of relevant contracts/ orders to be



*uploaded along with bid in support of having provided services during each of the Financial Year.*

5. Past Experience of similar Services: *The bidder must have successfully executed/completed similar services over the last three years i.e., the current financial year and the last three financial years (ending month of March prior to the bid opening):-*

- 1. Three similar completed services costing not less than the amount equal to 40% (forty percent) of the estimated cost;*
- or*
- 2. Two similar completed services costing not less than the amount equal to 50% (fifty percent) of the estimated cost;*
- or*
- 3. One similar completed service costing not less than the amount equal to 80% (eighty percent) of the estimated cost.”*

15. Senior Counsel for petitioner submitted that petitioner’s experience of “*similar services*” complied with both *clause 2* and *clause 5* in the following manner: -

- i. Bidder was required to have an experience of *three years* of providing ‘*similar type*’ of services to any Central/State Government organization/Public Sector Undertaking, and copies of relevant contracts and orders had to be uploaded along with the bid. In respect of this, reference was made to stated experience of petitioner of providing services to *State Bank of India* in *Madhya Pradesh* and *Chhattisgarh* (***SBI contract***). The said contract ran from 2<sup>nd</sup> November 2018 to 1<sup>st</sup> December 2022, and, therefore, fully complied with the requirement in *clause 2*.



- ii. As regards requirement under *clause 5*, the *SBI contract* was valued at *Rs. 182 crores*, which was far beyond 80% of the estimated cost of the tenders (*Rs. 63 crores* and *Rs. 31.7 crores*, respectively).
- iii. *Mr. Mohan* highlighted that the reasons for initial disqualification and the subsequent online response to the representation, both effectively stated that petitioner did not fulfil the parameters for required experience and hence, was disqualified. There was no other elaboration or embellishment given by the respondent to throw any light on reasons for this disqualification. Reasons became evident only when counter-affidavit on behalf of respondents nos.1 and 2 was filed.
- iv. Reply in counter-affidavit adverted to the *SBI contract*, stating that it was for execution of “*caretaker services*” and not “*security services*”, and therefore the scope of services which formed part of the *SBI contract*, executed by petitioner, would not qualify as relevant experience, since the subject tenders entailed “*security services*”. “*Caretaker services*” could not therefore qualify as “*similar services*” as per *clauses 2 and 5* of the bid document.
- v. To this, Senior Counsel for petitioner pointed out that the “*caretaker services*” provided under the *SBI contract* were effectively “*security services*” in SBI ATMs in two large regions of India and were for the provision of an unarmed security guard. Therefore, the services ought to have been considered as “*similar services*”. This being the central point of the dispute between the parties was further elaborated upon by the counsel.



16. Petitioner's counsel made the following submissions in order to buttress the point that "*caretaker services*" under the *SBI contract* would come within the purview of "*similar services*" as required by the bid document:

- i. SBI, being the tenderer/employer for the *SBI contract*, had issued a "*Satisfactory Certificate*", certifying that the petitioner had been empanelled with the SBI for providing 2241 unarmed security guards, and the services were found to be "*excellent*". The "*Satisfactory Certificate*" further mentioned that the total number of guards deployed was 2241 unarmed security guards and that the "*resourcefulness in providing security guards armed/unarmed*" was rated as "*very good*".
- ii. The *SBI contract* document was adverted to, in particular, the following clauses:

*"1.1.5. Caretaker means the employee of Service Provider providing Caretaker Services at ATM Site.*

*1.1.8. Caretaker Services means the service to be provided by Service Provider at the ATM Site and more specifically covered under clause 3 of this agreement.*

*3.2. It is clarified that the Caretaker shall not be armed or shall not carry any firearms either on his person or keep the same in the ATM site."*

The purpose of highlighting these clauses, by petitioner's counsel, was to focus on the nature and context of services under the *SBI contract*, which were termed as "*caretaker services*".

17. As per the petitioner, the scope of work in bid document was to provide 24x7x365 security services for, *inter alia*, prevention of damage and theft from monuments/museum/sites; perform watch and ward duties



at such monuments; exercise strict vigilance for protecting the monument/museum/sites from damage, defacement and destruction; report loss or damage to the ASI; ensure proper and orderly flow of visitors and prevent unauthorized entry; ensure and report on the serviceability of firefighting equipment and security lights; to make available first aid materials at designated places; prevent entry of street dogs and stray cattle into the premises; ensure that flower plants, trees and grassy lawns are not damaged; regulate vehicular movement in the monuments/sites and ensure proper parking.

18. Adverting to this list under the scope of work, Senior Counsel for the petitioner pointed out to the SBI contract's scope of work which provided that "*caretaker*" shall be available at the ATM site 24x7x365 in 8 hour shifts and *inter alia* manage customers queue; prevent use of the premises by squatters, hawkers or undesirable characters and stray dogs; maintain internal surveillance of the ATM site; assist customers in operating the ATM; escalate problems of any kind including malfunction, breakdown and other incidents to the Branch Manager; alert the police station or fire services in case of emergencies; ensure that garbage and waste materials were disposed of; guide customers for facilities inside the ATM and ensure that the ATM site would be clean.

19. In effect, Senior Counsel for petitioner focused on the similar nature of services - essentially duties of an unarmed guard on one hand, at the ATM of SBI, and on the other hand, at monuments of the ASI. The only difference was of nomenclature. SBI had adopted an '*euphemism*' for describing their services, essentially to include the purpose of providing security and miscellaneous duties of an attendant.





20. Senior Counsel relied upon the decision in *Tata Cellular v Union of India* 1994 INSC 283, to submit that the parameters of interference in matters of award of contract would be *mala fide*, bias, or arbitrariness to the extent of perversity. The duty of the Court is to confine itself to the question of legality, and irrationality, namely, the *Wednesbury* criteria of unreasonableness.

21. It was contended that petitioner's bid, despite having experience in "*similar services*", if not "*same services*", and in compliance with all other parameters, could not have been rejected without application of mind. The rejection itself smacks of perversity, irrationality and arbitrariness.

22. Another aspect highlighted was the *Technical Evaluation Report* of the Tender Committee for Assessment/Examination of the Bids ('*Tender Committee*'), which was appended along with the counter affidavit. As per their proceedings, the committee had unanimously decided to evaluate the bids on the basis of 3 main parameters out of a total of 21 technical parameters viz. evaluation on the basis of (i) *Private Securities Agencies (Regulation) Act* ('*PSARA/the Act*') license, (ii) turnover, and (iii) experience.

23. As per the report, only petitioner and respondent no.3 had been identified as having the PSARA license. As regards evaluation on the basis of turnover, yet again, both the petitioner and respondent no. 3 were found eligible.

24. As regards evaluation on the basis of experience, the Tender Committee simply stated in one cursory line in *paragraph 11* of the report that, "*taking into account above mentioned criteria of experience,*





*the Firm/Bidder - M/s SIS Limited was found eligible with respect to Southern Region, for further examination”.*

25. Senior Counsel for the petitioner pointed out that absolutely no reasoning was given, and, therefore, it smacked of *mala fides*, irrationality, and perversity, particularly since the petitioner had also qualified on the basis of the other two issues, namely PSARA and turnover.

26. The requirement of a PSARA license was even more important, considering the PSARA itself is for registration of private security agencies and requires the licensees to comply with certain regulatory requirements.

**Submission on behalf of respondent nos. 1 and 2**

27. Mr. Vikram Jetly, Central Government Standing Counsel (CGSC), appearing on behalf of respondent No.1 (*Union of India through Ministry of Culture*) and respondent no.2 (*ASI*), countered the submission made by counsel for petitioner. Counsel for respondents no. 1 and 2 submitted that petitioner was duly notified about the first *Technical Evaluation Report* of the Tender Committee, which was uploaded on the GeM portal on 23<sup>rd</sup> December 2024, notifying the findings of the Tender Committee, which contained reasons for disqualification of petitioner.

28. Petitioner was aware of the reasons for his disqualification and made a representation on 24<sup>th</sup> December 2024, submitting yet again similar documents pertaining to *past experience*. The documents were once again considered by the Tender Committee in its meeting on 8<sup>th</sup> January 2025, and it was found that none of the *past experience*



certificates submitted by petitioner were sufficient to qualify him at the technical stage.

29. Counter-affidavit filed by respondent nos.1 and 2 stated that the documents mentioned in the representation submitted by petitioner on 24<sup>th</sup> December 2024, did not qualify him on *technical grounds* and adverted to each document as under:

- (i) Documents submitted relating to “*IndusInd Bank Limited*” and “*Ashok Leyland*” were not considered in view of being private institutions;
- (ii) Documents pertaining to “*IIT Indore*” for a value of Rs. 3.6 crores, was way below the threshold of 80%, 50%, and 40% of the estimated cost as provided under minimum criteria; and
- (iii) Document pertaining to *MPESDC* was for a value of *Rs. 3.22 crores*, which was again below the said threshold.

30. Petitioner was then notified of the technical evaluation through GeM portal on 8<sup>th</sup> January 2025, with the description, “*on evaluation of all documents, not found eligible*”.

31. Counsel for respondent nos.1 and 2 stated that the current tenders were not related to any ordinary procurement but concerned the security and safeguarding of national heritage, i.e. centrally protected monuments, some of which have been declared as World Heritage Sites. Therefore, the tendering authority had acted in accordance with the terms and conditions of the Request for Proposal (*‘RFP’*) and without *mala fide* or bias.

32. It was, therefore, submitted that the Court's interference may not be necessary in view of the settled law in this regard. Reliance was



placed on decision of the Supreme Court in *Afcons Infrastructure Ltd v Nagpur Metro Rail Corporation Ltd. & Anr.* 2016 16 SCC 818, in particular on *paragraphs 11 and 13*.

33. The court had held that a mere disagreement with decision-making process or decision of the administrative authority was no reason for a constitutional court to interfere.

34. Reliance was also placed on *M/S Agmatel India Private Limited v M/S Resoursys Telecom* 2022 5 SCC 362, where the Court was dealing with rejection of technical bid of petitioner as unreasonable and arbitrary. It held that “*smart mobile phones fall in similar category products for a tender which was for supply of tablets for school children.*” The principles related to judicial review in tender matters were articulated by the Court in *paragraphs 24, 25, and 26*.

35. Reliance was also placed on the *Vidarbha Irrigation Development Corp. v M/S Anoj Kumar Agarwala and Ors.* 2020 17 SCC 577, in which a tender was called for the balance earthwork to be done in a canal. When the conditions of the tender came into question, the court relied upon previous decisions and noted, in *paragraphs 14 and 16*, that an essential tender condition must be complied with. For ease of reference, relevant paragraphs are extracted as under:

“14. The law on the subject is well settled. In *Bakshi Security & Personnel Services (P) Ltd. v. Devkishan Computed (P) Ltd.* [*Bakshi Security & Personnel Services (P) Ltd. v. Devkishan Computed (P) Ltd.*, (2016) 8 SCC 446], this Court held : (SCC p. 453, paras 14-16)

“14. The law is settled that an essential condition of a tender has to be strictly complied



with. In *Poddar Steel Corpn. v. Ganesh Engg. Works* [*Poddar Steel Corpn. v. Ganesh Engg. Works*, (1991) 3 SCC 273] this Court held as under : (SCC p. 276, para 6)

‘6. ... The requirements in a tender notice can be classified into two categories—those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance with the condition in appropriate cases.’

15. Similarly in *B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.* [*B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.*, (2006) 11 SCC 548] this Court held as under : (SCC pp. 571-72, para 66)

‘(i) if there are essential conditions, the same must be adhered to;

(ii) if there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;

(iii) if, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing;

(iv) the parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance with another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential



*in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction;*

*(v) when a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with;'*

*16. We also agree with the contention of Shri Raval that the writ jurisdiction cannot be utilised to make a fresh bargain between parties."*

*16. It is clear even on a reading of this judgment that the words used in the tender document cannot be ignored or treated as redundant or superfluous—they must be given meaning and their necessary significance. Given the fact that in the present case, an essential tender condition which had to be strictly complied with was not so complied with, the appellant would have no power to condone lack of such strict compliance. Any such condonation, as has been done in the present case, would amount to perversity in the understanding or appreciation of the terms of the tender conditions, which must be interfered with by a constitutional court."*

*(emphasis added)*

36. Counsel for respondent nos. 1 and 2 further emphasized that the nature of duties of the security guard required at the ASI monuments was of an extremely special nature and could not be compared to housekeeping duties, which petitioner had supplied as per the *SBI contract*.



37. In particular, focus was on “*watch and ward duties*” as per *clause 2* of the “*Scope of Work*” as required in the tender document at such monuments.

38. When comparison was made between these duties and services provided by petitioner, it was revealed that petitioner’s services were actually in the nature of “*caretaker services*”, involving internal surveillance of ATM sites, managing customer queues, preventing unauthorized use of premises by squatters, ensuring the cleanliness of glass surfaces, managing garbage bins, and disposal of waste materials, etc.

39. He, therefore, contended that despite the first *Technical Evaluation Report*, as per which petitioner was declared as ‘*not qualified*’, and the report having given proper reasons for the disqualification, two days’ time was given for technical clarifications. During this period, petitioner submitted his representation and gave similar documents. Therefore, there was no scope for considering petitioner to be qualified.

40. Further, it was pointed out that petitioner had withheld from the Court the first *Technical Evaluation Report*, which was uploaded on 23<sup>rd</sup> December 2024, which had given proper criteria and reasons for disqualification.

**Submissions made on behalf of respondent no. 3(SIS Limited)**

41. Respondent no.3 being the successful tenderer/L1, having been awarded the contract by Letter of Award dated 27<sup>th</sup> March 2025, essentially adopted the arguments of respondent nos.1 and 2, pointing out that petitioner had initially submitted its experience, which involved



the *SBI contract*, and thereafter sought technical clarifications, which were re-submitted on 24<sup>th</sup> December 2024.

42. Aside from this, he focused on PSARA in particular on **Sections 2(g)**, which defines ‘*private security agency*’, and **Section 4**, which ‘*prohibits anybody who is not licensed as a private security agency from carrying on such business*’. Reliance was also placed on **Section 6**, which provides for “*persons not eligible for a license*” and **Section 13(k)**, which provides for “*cancellation and suspension of license in case there was any infraction by the private security agency. i.e., negligence, misappropriation, indiscipline, etc.*”

43. He effectively stated that the tender required the agency to be registered under PSARA and that this requirement had been incorporated into the terms and conditions of the bid through Bid Corrigendum dated 20<sup>th</sup> August 2024, mandating the bidders to have a valid legal license and registration under PSARA in all respective States and Union Territories under the jurisdiction of the concerned regions of ASI.

### **Analysis**

44. Having heard the counsels for the parties and upon perusal of the documents submitted, it is clear that the scope of dispute is very narrow and related to the technical disqualification of petitioner, despite the petitioner having submitted valid experience certificate from *SBI*, where it had provided security services at ATMs in two States (Madhya Pradesh and Chhattisgarh).

45. Petitioner bid had been rejected on the ground that the *SBI contract* termed those services as “*caretaking services*” as opposed to “*security services*”.





46. The core issues therefore are, (i) whether the mere use of terminology in previous experience acquired by petitioner would disqualify them from being considered for this tender, and (ii) whether there was any arbitrariness, *mala fide*, or bias in the decision-making process of the tendering authority, i.e. respondent nos. 1 and 2.

47. An examination of the bid document, in particular, *clauses 2 and 5*, which were the focus, would show that the requirement was for providing “*similar/similar type*” of services to any Central/State Government organizations/PSU.

48. It is also clear from the bid document that the category of personnel required was that for unarmed security guards. While evaluating the bids, what was to be considered by the Tender Committee was whether these services performed by a bidder previously were for supply of *unarmed security guards*, for the purposes of providing protection as per the client's mandate. In the *SBI's* case, it was of ATMs, while as per the tender, it was for ASI monuments.

49. The only unfortunate bit from the petitioner's point of view, in the *SBI contract*, was the use of the term “*caretaker*.”

50. An examination of scope of work under the *SBI contract* is therefore essential. For ease of reference, the scope of work under the *SBI contract* is extracted as under:

### **“3. SCOPE OF SERVICES”**

*3.1 The scope and nature of the work which the Service Provider has to provide to the Bank (i.e. caretaker Services) is as follows:*

*3.1.1 The caretaker shall be available at the ATM Site for 24 x 7 x 365 in appropriate shifts (8*



hours) or in shifts as stipulated by the Bank to ensure proper housekeeping of the site;

3.1.2 The caretaker shall be in uniform with proper authorization/Identification badges/identity card of the caretaker Agency. The agency will give prior notification to the Branch Manager of the branch concerned or its authorized official or Channel Manager about the caretaker posted at a particular ATM site.

3.1.3 The Caretaker shall manage customers' queue.

3.1.4 The Caretaker shall prevent use of the premises by squatters, hawkers or undesirable characters and stray dogs etc.

3.1.5 The Caretaker shall maintain discreet internal surveillance of the ATM Site;

3.1.6 The caretaker shall ensure cleanliness of glass surfaces (using good quality cleansing material provided by the Service Provider) and proper cleaning of the ATM and ATM Site (Inside and outside).

3.1.7 The Caretaker shall assist Customers in operating the ATM. However, the caretaker shall not operate the ATM in any manner whatsoever on Customer's behalf.

3.1.8 The caretaker shall escalate problems of any kind (e.g. malfunctioning/ breakdown of ATM lighting, AC, UPS, access door), and other incidental difficulties, if any, to vendor concerned and the Branch Manager / Channel Manager concerned. The Caretaker will maintain a suitable register for entering details of such reports made including persons called etc;

3.1.9 The Caretaker shall promptly call police station, fire services, etc., in case of emergencies.

3.1.10 The Caretaker shall arrange to empty garbage bins and arrange for disposal of garbage and waste materials accumulated within ATM room;



3.1.11 *The Caretaker shall guide customers to Cheque Drop Box, wherever the facility is available (at present at Onsite ATMs) and indicate availability of brochures / leaflets etc of SBI, kept on the site,*

3.1.12 *The Caretaker shall receive complaints/ requests/ suggestions, in writing, from the customers and provide them with acknowledgement thereof. Complaints/ requests/suggestions received during a day will be collected by the branch official on next day.*

3.1.13 *Wherever necessary the Caretaker shall, switch off/on the genset. Refill the fuel provided and arranged by SBI.*

3.1.14 *Allow access, in addition to the customers, to the officials from SBI, Agency engineers or authorized persons of the ATM Vendors, Managed Services Vendors or any other person duly authorized by SBI only on verification of their identity/authority. Caretaker will maintain an access register, for such entries where the particulars like name of the organization, time, purpose and signature or thumb impression, as the case may be, have to be recorded. In short, the Caretaker should maintain the Attendance, Visitors Register, Complaint Register and Access Register at the ATM site.*

3.1.15 *The Caretakers shall guide the customer to the nearest SBI ATM site in case of failure of service by the ATM;*

3.1.16 *The Caretaker should be polite and courteous while answering the queries of the customers and otherwise dealing with them or any Visitor. The caretaker shall exercise restraint and avoid being provoked.*

3.1.17 *The Caretaker should have the contact numbers of the local designated officials of the Caretaker Agency;*

3.1.18 *The Caretaker shall take care of the ATM room ensuring that the site is clean, electrical*



*fittings and signage are working and switched off when not required, racks are filled with brochures/pamphlets when provided at site and inform the Branch/ Channel Manager for any further requirement. The Caretakers should ensure suitable temperature of AC cooling.*

*3.1.19 The Caretaker shall notify appropriate agency as and when required to clean site, replace fittings, etc. or advise MS Vendors Management Centre or Bank's designated official. If at any time the ATM is out of service caretakers should immediately notify the MS Vendors Management Centre and/or the Branch/Channel Manager concerned.*

*3.1.20 In the event of emergency or irregular situation, escalate to respective agency, SBI and service Providers Management Centre of agency. The agency will be responsible to initiate necessary steps to redress any irregular and/or emergency situation;*

*3.1.21 The Caretaker should lock the outside shutter in place so that it remains open at all times.*

*3.2 It is clarified that the Caretaker shall not be armed or shall not carry any firearms either on his person or keep the same in the ATM site.”*

51. A holistic reading would bear out that though the services were described as “*caretaker services*”, the requirement was essentially for “*unarmed security guards*” at the ATM, who takes care of the full expanse of issues at the ATM including, securing the safety of the ATM, ensuring that there are no miscreants, ensuring that there is no damage to the ATM, premises are effectively kept clean, customers who are visiting the ATM are duly guided and there is a mechanism to alert the management in case of any emergency.

52. The services being performed could be further safely classified into that of providing security, surveillance, housekeeping, customer



guidance, escalation of problems, informing emergency services, receiving complaints and suggestions, and maintenance of infrastructure.

53. On the other hand, the scope of services required by the respondent/tendering authority was also for unarmed security guards, for the provision of the following services, which are extracted as under:

**“A. Scope of Work**

*The Archaeological Survey of India invites e-Bids on GeM Portal in prescribed form under the LCS (Low Cost System) method/system comprising of Two Bid System Technical Bid and Financial Bid for engagement of 725 man-days of Security Guards (without Arms) per day from Eligible Bidders for deployment at various Centrally Protected Monuments/Sites/Museums and Establishments of ASI in the South Region as under:*

Sl. No.	ASI Region	Classification of Areas	No. of man-days of Security Guards per day	Total number of man-days of security guards per year
1.	South	A	88	88 x 365 = 32,120
2.		B	258	258 x 365 = 94,170
3.		C	379	379 x 365 = 1,38,335
Total			725	2,64,625

*Details of deployment i.r.o. security guards at various CPMS/Sites/Museums/Establishment of ASI are attached*

*Site in-charge of ASI shall chart-out the duty places, shift timings and nature of security duty for all the outsourced security guards and shall monitor their duties, through the security Supervisor. The successful Bidder shall be duty bound to provide 24x7x365 security services as per the requirements of ASI and such condition may be factored in the Bids of the intending*



*Bidders. Cost of all Security Personnel including the Security Supervisor is to be included in the Bids.*

***Security Guards:***

*The schedule of work to be performed “Round the Clock” by the Security Guards is as follows:*

- 1. Prevention of damage/theft from the monuments/museums/sites and/ or part thereof and regulation of entry/exit of visitors, etc.*
- 2. To perform watch and ward duties at such monument or part thereof or at such offices or booking offices at such hours and such time as may be fixed and allocated.*
- 3. Exercising strict vigilance for protecting the monuments/museum/sites and other establishments of ASI from damage, defacement, and destruction.*
- 4. To keep the monument or the part of monument under their charge/duty or the office or booking offices to which they are attached and to supervise neatness, tidiness and cleanliness, under the instructions of the Officer-in-Charge, including such items of works relating to the maintenance and upkeep of the monuments or its part thereof, as the case may be.*
- 5. To report loss or damage to the ASI property immediately to his superior officer as per instructions.*
- 6. To safeguard the antiquities on display in the galleries and those lying in the reserve collection including sculpture sheds at various monuments.*
- 7. Protecting the assets with-in the monument/museum/sites and other establishments of ASI.*
- 8. Ensuring proper and orderly flow of visitors and preventing unauthorized entry in the monument/museum/sites and other establishments of ASI.*





9. *Round the clock patrolling of the assigned duty area in monuments/museums/sites and other establishment of ASI.*
10. *Carrying out such other specified takes as laid down in the Standing Orders to be prepared by successful Bidder and to be provided by ASI and its respective officers in respect of the monuments/museums/sites and other establishment of ASI.*
11. *To ensure and report on serviceability of all Fire Fighting Equipment and Security Lights.*
12. *To ensure and report on serviceability of communications and electrical systems/installations regarding their operational and functional status on regular basis, SITREP (Situation Report) to be sent at designated timings to the Security Control Room. Loss/event information reporting system.*
13. *To make available First-Aid materials at the designated places at all times.*
14. *Entry of the street-dog and stray cattle into the premises is to be prevented. They should be driven out.*
15. *It should be ensured that flower plants, trees and grassy lawns are not damaged either by the personnel or by the visitors or by stray cattle.*
16. *To display mature behaviour with the staff and visitors, especially towards female personnel and female visitors.*
17. *Regulation of vehicular movement in the monuments/sites and proper parking of vehicles.*
18. *Any other duties assigned by the In-charge of Circle/Site In-charge as and when required.*
19. *To perform duties under the administrative control of the respective Site in-charge, through their Security Supervisor.”*

54. Clearly, the perusal and analysis of the above would bear out that the said services are effectively required for security, vigilance, reporting





of loss and damage, visitor management, infrastructure management, escalation, housekeeping, regulating movement of visitors, and vehicles and reporting to supervisors in case of any issue.

55. A basic comparison between the nature of services provided under the *SBI contract* and those required by the tenders would show that they are substantially similar. It is only the context that changes i.e. from an ATM to a monument.

56. The service and skills required for tendered work is of an unarmed security guard who is trained for the purpose of providing services as delineated above.

57. In the opinion of this Court, any reasonable and prudent person would consider that these are “*similar services*” and cannot be vastly distinguished merely on the basis of nomenclature. The *SBI contract* would have, for the purposes of their own internal systems, defined these services as “*caretaker services*”. Mere use of the ‘*caretaker*’ phrase does not dilute, in any manner, the core nature of service i.e. of an unarmed security guard.

58. Moreover, it is quite clear from the experience certificate given by the *SBI*, that petitioner had essentially provided unarmed security guards, 2241 in number.

59. Petitioner’s contention that an interpretation of *SBI’s contract* had already been given by *SBI*, and they were not asking this Court to interpret *SBI’s contract*, is possibly correct and apposite.

60. The Court does not have to do an extensive exercise in interpreting the *SBI contract*, considering that the experience certificate itself *explicitly* states that “*security services*” were given at the ATMs.



61. Petitioner also contends that there was no relaxation of the conditions, as had been contemplated in *Vidarbha Irrigation (supra)*, being cited by the respondent.

62. Petitioner's plea was that the test of a '*reasonable person*' be adopted and that the decision of the tendering authority would pass muster on that basis.

63. It is, therefore, apposite to advert to the seminal decision of the Supreme Court in *Tata Cellular (supra)* for this purpose. A constitutional court, exercising its powers under *Article 226* of the Constitution of India, judicially reviewing a tender decision, is only concerned with the manner in which the decision is taken *inter alia* whether it's illegal and that the decision maker understands the law and gives proper effect to it, or otherwise was it irrational in the nature of *Wednesbury* unreasonableness or was procedurally improper.

64. In this regard, *paragraphs 93 and 94 of Tata Cellular (supra)* are extracted as under for quick reference:

*"93. In Union of India v. Hindustan Development Corpn. [(1993) 3 SCC 499] this Court held thus : (SCC p. 515, para 9)*

*"... the Government had the right to either accept or reject the lowest offer but that of course, if done on a policy, should be on some rational and reasonable grounds. In Erusian Equipment & Chemicals Ltd. v. State of W.B. [(1975) 1 SCC 70 : (1975) 2 SCR 674] this Court observed as under : (SCC p. 75, para 17)*

*'When the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions". The activities of the Government have a public*



*element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure.’ ”*

*94. The principles deducible from the above are:*

*(1) The modern trend points to judicial restraint in administrative action.*

*(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*

*(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*

*(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*

*(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*

*(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.*



*Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”*

(emphasis added)

65. *Wednesbury* unreasonableness invites the Court to assess a decision as to whether any authority acting reasonably could have reached the conclusion or alternatively, no reasonable and prudent person who had applied his mind could have arrived at that decision.

66. Counsel for respondent nos. 1 and 2 focused mainly on the fact that the Tender Committee had given its *first report*; and post the clarification, had given its *second report*; while the first report did not give any reasons, however, *second report* did state reasons.

67. Even on perusal of the *first report* uploaded on 23<sup>rd</sup> December 2024, it would show that Tender Committee had set out 21 parameters and had chosen to assess the bidders on 3 parameters, i.e. PSARA license, turnover, and experience.

68. While both the petitioner and respondent no.3 qualified on the basis of PSARA license and turnover, the only issue was that of *past experience*, on the basis of which petitioner was disqualified. There is only one line of reasoning provided in *paragraph 11* of the report, which states as under:

*“taking into account above mentioned criteria of experience, the Firm/Bidder-M/S SIS Limited was found eligible with respect to Southern Region for further examination”.*

69. It is quite clear that there was no cogent/clear reasoning which was furnished and merely a decision was handed down by means of the cryptic *paragraph 11*, disqualifying petitioner and finding respondent



no. 3 as eligible. No embellishment, no elaboration, no light has been thrown by the Tender Committee as to on what basis and parameters they had reached this decision.

70. There is total silence and opacity in the manner in which the authority arrived at this decision. Clearly, the petitioner was at a loss in understanding as to why they had been disqualified. If any such clue had been given, they would have been in a better position to submit any further documents, if required, or to provide a clarification in that regard.

71. Therefore, reliance on the *first report* by the respondent nos. 1 and 2 would not assist them. Moreover, the ruse which was put up by the respondent no. 3's counsel of a PSARA registration, in fact, works in favour of the petitioner.

72. The fact that out of 76 bidders, 75, including the petitioner, were rejected is dispositive of the fact that none except respondent no.3 was even remotely found eligible. What is more important in this context is that only two out of 76 i.e. petitioner and respondent no.3, were found to have PSARA licenses.

73. A license under PSARA was evidently required, considering that it was a statutory mandate, brought in to regulate the functioning of private security agencies, seeing the increased demand in business establishments and other institutions for security.

74. There was a growing concern that many agencies were conducting operations without due care and were not verifying the antecedents of the person and the employee. In order to provide some deterrence and filter, PSARA was brought into force in 2005, mandating only a licensed agency to provide private security guards.



75. The fact that petitioner was a license holder under PSARA also makes it obvious that they were in the business of providing security guard services and were not just a fly-by-night operator.

76. Having passed muster on both turnover and PSARA registration, being deleted on the basis of the proposed ‘mismatch’ in experience contract with *SBI* using the word “*caretaker*” cannot be accepted. Any prudent person would simply peel off only one thin layer to appreciate the real purpose of the contract and would have arrived at an undeniable conclusion that the contract was for *security services*.

77. The tendering authority could have been in a better position in this situation by expanding the base of the consideration beyond just one person out of 76, in order to get a favourable bid, and could have easily asked for a clarification on this issue from the petitioner.

78. Respondent no. 3 placed reliance on *Agmatel* (*supra*), inferring that the author of the tender document is the best person to understand and appreciate its requirements, cannot be refuted or distinguished.

79. Petitioner’s counsel uses *Agmatel* (*supra*) in his favour by stating that *SBI*, which was the tendering authority in its tender, was the best agency to understand and appreciate the requirements. The same had been done by stating in the experience certificate, and, therefore, *Agmatel* (*supra*) would be read in his favour. Relevant paragraphs of *Agmatel* (*supra*) are extracted as under:

*“24. The scope of judicial review in contractual matters, and particularly in relation to the process of interpretation of tender document, has been the subject-matter of discussion in various decisions of this Court. We need not multiply the authorities on the subject, as suffice it would be*



*refer to the three-Judge Bench decision of this Court in Galaxy Transport Agencies [Galaxy Transport Agencies v. New J.K. Roadways, Fleet Owners & Transport Contractors, (2021) 16 SCC 808:2020 SCC OnLine SC 1035] wherein, among others, the said decision in Afcons Infrastructure [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818] has also been considered; and this Court has disapproved the interference by the High Court in the interpretation by the tender inviting authority of the eligibility term relating to the category of vehicles required to be held by the bidders, in the tender floated for supply of vehicles for the carriage of troops and equipment.*

*25. This Court referred to various decisions on the subject and stated the legal principles as follows : (Galaxy Transport Agencies case [Galaxy Transport Agencies v. New J.K. Roadways, Fleet Owners & Transport Contractors, (2021) 16 SCC 808 : 2020 SCC OnLine SC 1035] , SCC paras 14-20)*

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*26. The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given.”*

(emphasis added)





80. Reliance by respondents on *Afcons* (*supra*) does not sway this Court's decision. The Court is not at variance with the principles reiterated in *Afcons* (*supra*). The relevant paragraphs of *Afcons* (*supra*) are extracted as under:

*“11. Recently, in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) [Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99] it was held by this Court, relying on a host of decisions that the decision-making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered with. Interference is permissible only if the decision-making process is mala fide or is intended to favour someone. Similarly, the decision should not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible authority acting reasonably and in accordance with law could have reached. In other words, the decision-making process or the decision should be perverse and not merely faulty or incorrect or erroneous. No such extreme case was made out by GYT-TPL JV in the High Court or before us.*

*13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision.”*

(emphasis added)



81. *Afcons (supra)* also re-emphasised that interference in a tender/contract is permissible if a Court finds arbitrariness or irrationality or finds it perverse. In this matter, as adumbrated above, the Court finds the disqualification of petitioner, based on reasons given, as being perverse, arbitrary and irrational.

82. It is made clear that this Court is not foisting any interpretation on the tendering process. What is being assessed is whether the decision-making process of the tendering authority was arbitrary or irrational, unreasonable, and in that, the Court leans in favour of accepting the plea of petitioner and, therefore, allows the prayers in Writ Petitions.

83. Considering that respondent no. 3 was already awarded the contracts and has been in place since 27<sup>th</sup> March 2025, the question would arise as to what would be the consequence of operations being allowed, whether the petitioner would be given compensation for having lost out in the tenders or whether respondents no. 1 and 2 would have to re-tender keeping in mind that the said tenders were floated for two years.

### **Conclusion**

84. For the reasons stated above, the tendering authority erred in rejecting the petitioner's bids by disqualifying it on the basis of stated past experience. The assessment by the tendering authority, for the reasons stated above, is in the opinion of this Court arbitrary and unreasonable, and, therefore, cannot be sustained.

85. The Writ Petitions, thus, are allowed and the two Letters of Award dated 27<sup>th</sup> March 2025, issued by respondent no. 2 in favour of respondent no. 3, are quashed and respondent no. 1 is directed to initiate



the tender process afresh for the work allotted to respondent no.3 forthwith and complete the same within a period of three months from date of this order.

86. Till the time the work is allotted in terms of the fresh tenders, which are to be floated pursuant to this order, respondent no. 3 shall be allowed to carry on the work allotted to it.

87. Pending applications (if any) stands disposed of.

88. Judgment be uploaded on the website of this Court.

**ANISH DAYAL, J**

**DEVENDRA KUMAR UPADHYAYA, CJ**

**AUGUST 01, 2025 /RK/bp/sp**